

ORDINANCE NO. 3248-97

AN ORDINANCE PROHIBITING THE SALE OF TOBACCO PRODUCTS TO MINORS, PROVIDING FOR FINES AND OTHER PENALTIES FOR THE SALE OF TOBACCO PRODUCTS TO MINORS, AND PROVIDING FOR THE LICENSING OF THE RETAIL SELLERS OF TOBACCO PRODUCTS, ALONG WITH FEES FOR SUCH LICENSING.

BE IT ORDAINED by the Governing Body of the City of Ottawa, Kansas, as follows:

Section 1: Purposes.

The governing body of the City of Ottawa, Kansas, finds that youth addiction to tobacco products is a public health problem with grave health consequences. The purpose of this ordinance is to provide a strict and enforceable means of preventing the illegal sale of tobacco products to minors.

Section 2: Definitions.

1. "License" means a license issued by the City of Ottawa, Kansas for the retail sale of tobacco products.
2. "Licensee" means the holder of a valid license for the retail sale of tobacco products, or such license holder's employees.
3. "Minor" means any person under 18 years of age.
4. "Public Place" means any area to which the public is invited or in which the public is permitted, including, but not limited to, any right-of-way, mall or shopping center, park, playground, and any other property owned by the city, and any school district, or any park district.
5. "Retail Tobacco Store" means a retail store where tobacco products are sold.
6. "Self-Service Displays" means open displays of tobacco products and point-of-sale tobacco promotional products that the public has access to without the intervention of a store employee.
7. "Tobacco Product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco or any other form of tobacco or tobacco papers which may be used for smoking, chewing, inhaling or ingesting by any other means.
8. "Tobacco Vending Machine" means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, or slugs.

9. "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until after it is purchased.

Section 3. Identification required.

No retailer shall sell or permit to be sold any tobacco products to an individual without requesting and examining photographic identification or other evidence establishing the purchaser's age as eighteen years or greater.

Section 4. License required.

After July 1, 1997, it shall be unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid license from the City of Ottawa, Kansas, for each location in which tobacco products are sold. All such licenses shall be renewed annually for each calendar year after the first license is granted.

Section 5. Fee

The fee for the license shall be \$25.00, and shall be due before each initial license is granted, and thereafter again annually upon the renewal of each license.

Section 6. Non-transferability

A tobacco retail license is non-transferable, except a new license will be issued to a tobacco retailer who changes location.

Section 7. Vending Machines

To sell cigarettes or tobacco products by means of a vending machine in any in any establishment, or portion of an establishment, which is open to minors is prohibited except that this section shall not apply to:

- (1) The installation and use by a proprietor of the establishment, or by the proprietor's agents or employees, of vending machines behind a counter, or in some place in such establishment, or portion thereof, to which minors are prohibited by law from having access;
- (2) The installation and use of a vending machine in a commercial building or industrial plant, or portions thereof, where the public is not customarily admitted and where machines are intended for the sole use of adult employees employed in the building or plant; or

(3) A vending machine which has a lock-out device which is inoperable in the continuous standby mode and which requires manual activation by the person supervising the operation of the machine each time cigarettes or tobacco products are purchased from the machine .

Section 8. Out-of-Package Sales Prohibited

It is unlawful to sell cigarettes out of the manufacturer's package without required health warnings. It is unlawful to sell cigarettes in packages of fewer than twenty (20) cigarettes per package.

Section 9. Tobacco Samples Prohibited

No person shall knowingly distribute or furnish without charge or at nominal charge, or cause to be furnished or distributed without or at nominal charge, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, in any public place or at any event open to the public, except in retail tobacco stores.

Section 10. Revocation of Licenses

A. Any license holder who violates any provisions of this ordinance, or permits an employee to violate any of the provisions of this ordinance, shall have his license suspended after notice and opportunity to be heard as follows:

1. In the case of a first violation, the licensee or employee shall be fined up to two hundred dollars (\$200) and shall be notified in writing of penalties levied for further violations.
2. In the case of a second violation within a two-year period, the licensee or employee shall be fined up to five hundred dollars (\$500) and the license shall be suspended for not less than thirty (30) consecutive business days nor more than three (3) months. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended.
3. In case of three or more violations within a two year period, the licensee or his or her employee shall be fined up to one thousand dollars (\$1,000) and the license shall be revoked for not less than six (6) months nor more than eighteen (18) months from the date of the revocation. Tobacco retailers must remove all

tobacco merchandise from all areas accessible to the public while the license is suspended.

B. The Municipal Court shall conduct hearings regarding license suspensions, if a license-holder requests such hearing in writing with the clerk of the **Municipal Court, within ten days after receipt of notice of suspension. Rulings made by** the Municipal Court, after such hearing, shall be final.

Section 11. Enforcement.

Violations of Sections 4, 7, and 9 of this ordinance are subject to a fine of up to \$1,000 per day.

Section 12. Purchase or possession of cigarettes or other tobacco products by persons under 18 years of age.

A. It shall be unlawful for any person who is under 18 years of age to purchase or attempt to purchase or possess or attempt to possess cigarettes or other tobacco products.

B. Violation of this section is a cigarette and tobacco infraction for which the fine is \$25.00.

Section 13. Severability.

If any provision, clause, sentence or paragraph of this ordinance or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the other provisions of this ordinance.

Section 14. Effective Date

This ordinance shall take effect after its publication in the official city newspaper.

PASSED AND ADOPTED by the Governing Body of the City of Ottawa, Kansas, this 15th day of October, 1997.

Vicki N. Cummiskey, Mayor

ATTEST:

Scott D. Bird, City Clerk